

United Nations Mission in Bosnia and Herzegovina

Judicial System Assessment Programme (JSAP)

Banja Luka Team

FINAL REPORT

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UNITED NATIONS

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JSAP Final Reports

The attached Final Report is one of seven prepared by the staff of JSAP's regional offices and its special office in Livno. They are intended as "handover documents" to provide the Independent Judicial Commission and other agencies involved in judicial reform with a "snapshot" of the state of the judicial system throughout Bosnia and Herzegovina as of November 2000. There was no standard format for these reports. Each team was able to focus on the particular problems and concerns which it had dealt with in its area of responsibility. The reports do not purport to cover all of the work of JSAP during the period of its mandate (November 1998 – November 2000). Instead, they are intended to serve as a guide for international community and the legal community of Bosnia and Herzegovina in their attempts to reform the judicial system and establish the rule of law.

The views expressed in these reports are those of the regional teams, and may not reflect the opinions of JSAP's Main Headquarters, UNMIBH or the United Nations.

Executive Summary

The UNMIBH Judicial System Assessment Programme (JSAP) began operations in October 1998 and the mandate expires on 30 November 2000. This final report provides a brief overview of the activities of the Banja Luka Regional Office of JSAP throughout the two-year programme.

In the early stages of JSAP, the entire mission concentrated on the production of a comprehensive review of the court system in order to establish a global assessment of the quality and circumstances of judicial activities. JSAP also completed several preliminary reports on various aspects of court system. Subsequently, JSAP's basic understanding of the court system allowed it to delve into various complex and problematic themes, and at this point some of the major insights into the functioning of the judiciary were acquired.

This final report concentrates on the activities accomplished and insights garnered by JSAP after the preliminary review period was completed, and the report contains six substantive sections. The first section on Thematic Reports explains the JSAP Banja Luka team's contribution to a few issues of particular noteworthiness for the judiciary. Second, a section on Institution Building explains the successes gained through an active partnership with local authorities to re-establish the rule of law on a practical basis. Third, JSAP Banja Luka worked in conjunction with the other regional JSAP teams and the Main Headquarters (MHQ) on several issues to collect data in a standardized, countrywide manner. Next, the team focussed on several high profile cases, that were interesting per se, and as an example of the functioning of the judiciary generally. Finally, regarding the Judicial Review Process, JSAP Banja Luka became deeply involved in the preparation and monitoring of the Councils due to the team's location in the capital of the Republika Srpska (RS), and also monitored the Canton 6 Commissions.

It is particularly difficult to provide a concentrated critique of the entire judicial system, but JSAP Banja Luka team has developed a global perspective, which may be usefully shared. Generally, the team believes that the huge delays in the courts result in an enormous backlog of cases, while the speed at which judges handle cases remains stable due to a work quota system. Therefore, judges and prosecutors have extensive leeway to select cases from the backlog, and apparently select easy cases, seeking to avoid technically complex cases, cases concerning ethnic minorities, political cases, organized crime cases and economic corruption cases. Thus, the systemic problems that cause delay opens up the courts to undue political, ethnic and economic influence in the selection and processing of cases, resulting in a weak judiciary.

Overall, the Banja Luka team is pleased with the accomplishments and insights developed over two years of intensive assessment of the judiciary in the Area of Responsibility. Review of the court system has been a challenging and at times arduous task, but in the end very rewarding on a personal and professional level. The team notes with pleasure the ability to build solid partnerships with the local judicial authorities, and regrets only that the JSAP mission has ended before the real accomplishments have been truly achieved. The Banja Luka team hopes that any follow-on agencies will be able to carry to fruition JSAP's goals of establishing an independent and efficient judiciary based on the rule of law.

1 Introduction

The JSAP programme began in October 1998, as a special addition to the existing mandate of UNMIBH.¹ The JSAP programme included an office at the Main Headquarters and in each of the seven Regional Headquarters. The Banja Luka Region contains seven municipalities in the Republika Srpska, with five basic courts, a district court, the Supreme Court and the Constitutional Court. The Banja Luka Region also includes the entire Middle Bosnia Canton (Canton 6), with 12 municipalities, seven municipal courts and the Cantonal Court.

The Banja Luka Regional Office of JSAP has made a variety of contributions to the improvement in the judicial system in the area of operation. JSAP Banja Luka undertook research and investigation on a numerous issues that were regularly summed up in weekly reports that form a deep reservoir of information on the judicial system. Furthermore, JSAP Banja Luka developed a strong partnership relationship with key members of the domestic judicial system, which allowed JSAP to make a contribution to successful judicial reform interventions, large and small. This final report will emphasize the contributions made to judicial reform by the JSAP Banja Luka team, as well as noting issues of significant importance that remain unresolved and should be the focus of future interventions by follow-on international agencies.

The JSAP Regional Headquarter teams are made up of a team coordinator, a judicial system officer, a local lawyer, a legal interpreter and an administrative assistant. JSAP Banja Luka Region has been fortunate to retain the same three local staff for the duration of the programme, although five international staff has passed through the office. The core local staff is as follows:

Zoran Lipovac, National Professional Officer, a former judge;
Milanka Cubra, Legal Interpreter, a local lawyer;
Dijana Petkovic, Administrative Assistant, a University graduate in English Language.

The first international team members, who arrived in Banja Luka in October 1998, were the team coordinator Vincent del Buono, a Canadian lawyer, and Graciela Fuentes, an Argentinean lawyer. Mr del Buono left the mission in December, 1998, and Ms Fuentes continued as the team coordinator until November, 1999, when she joined the Main HQ staff. Zdravka Kalajdjewa, a lawyer from Bulgaria, became the new team coordinator and arrived in December 1999, remaining until April 2000. The current team coordinator, Peter Korneck, a prosecutor from Frankfurt, Germany, arrived in July 2000. Christopher Fry, a lawyer from the U.S., arrived in September, 1999 and has served as the Officer in Charge or Judicial System Officer until present.

¹ Security Council Resolution 1184 (1998) of 16 July 1998. Under this Resolution JSAP was set up to monitor and assess the court system as part of an overall programme of legal reform as outlined by the Office of the High Representative (OHR). JSAP is a natural extension of the mandate of the Mission under Annex 11 of the Dayton Agreement, which covers judicial activities.

2 Thematic Reports

One of the strategic goals of the JSAP mission was to develop comprehensive thematic reports that provided a detailed investigation and analysis of key components of the judicial system, and to provide policy advice and recommendations for future implementation activities.

2.1 Interim Report on Delay and Detention

In February 2000, JSAP MHQ issued this special report highlighting the problem of lengthy detention of accused who have not received a final verdict. As part of a report on delay in the judiciary generally (see below), JSAP Banja Luka undertook a survey of the impact of delayed proceedings on the actual length of detention of the accused. Astonishingly, JSAP Banja Luka found that in the Tunjice Prison in Banja Luka, over 40 inmates had been in detention for over two years, and some for as long as seven years. Rather than postpone the delivery of the information until the end of the Mission, JSAP MHQ decided to issue an Interim Report providing some basic presentation of the legal and factual issues surrounding lengthy detention.

The Interim Report exposes a variety of problems in the criminal justice system that all contributed to lengthy detention. According to prison officials, the delay is caused by the complexity of the cases, the lack of psychiatric experts, jurisdictional problems related to the change in the Inter-entity boundary line and wartime frontlines, and the generally slow court proceedings.

The Interim Report signaled the depth of the problem of delay in the judiciary, and highlighted the particularly troublesome consequence of excessive delay in detention pending a final verdict. However, delay in the court system constitutes one of the fundamental problems with the BiH judiciary, and JSAP BL also developed a more extensive report on this issue.

2.2 Thematic Report: Delay in the Judiciary

The JSAP Banja Luka Team dedicated considerable, time, effort and resources to the production of a draft Thematic Report on Delay. From roughly the end of January until the end of April 2000, over half of the JSAP Banja Luka team's efforts focussed on this major report. It may prove difficult here to summarize the report fairly for several reasons: Firstly, the report is long and complex. Second, the MHQ has yet to issue the final version, which may differ in part from the draft version. Finally, one of the authors returned to Bulgaria after the completion of the report. Nevertheless, a brief and incomplete summary of the report follows.

Generally, the report finds that there are huge delays in the judiciary in BiH for a variety of reasons. The delays lead to an enormous backlog in cases of all sorts, while the speed at which judges handle cases remains stable due to a work quota system. The judges have extensive leeway to select cases from the backlog, and apparently select easy cases, seeking to avoid technically complex cases, cases with ethnic minorities, political cases, organized crime cases and economic corruption cases. Thus, the delay problem also opens up the courts to undue influence in the selection and processing of cases.

The first section of the report sets out the nature of the problem and provides an analysis of the scope of delays and backlog in the court systems. The section finds the figures of the newly registered cases reported by the courts are impressively high. A very brief analysis shows that not all registered cases require judicial responsibility. Many them are the responsibility of the court clerks and require only a verifying signature by a judge. A high number of cases should be the responsibility of other institutions - public notary, company registrars, a possible separate department for execution of judicial decisions etc. The following figures summarize the nature of the problem.

In 1999 the Banja Luka Basic Court reported **58,808 newly registered cases**, including:
16,475 - requests for issue of certificates – the responsibility of public notaries or court clerks
12,741 - land-book registry requests of which 9 182 concerned issue of land title
2,506 - execution cases
3,652 - requests for the issue of certificate for criminal records.

In 1991 the same court reported **94,660 newly registered cases**, including:
54,698 - execution cases
7,624 - land books and other notary public responsibilities
8,903 - requests for the issue of certificates for criminal records
6,040 - requests for issue of other certificates

A subsequent section of the report seeks to provide an explanation of the various reasons, large and small, for the delays. JSAP discovered one fundamental procedural bias in the procedure codes that skewed all court activity towards delay, the ‘requirement to seek the material truth’ The Criminal Procedure Codes provide:

“Courts and governmental agencies participating in criminal proceedings must truthfully and completely establish the facts that are important to the rendering of a lawful decision.”
(Article 15 of the RS – and Article 13 of the Federation Law on Criminal Procedure)

The study found that the *ex officio* duty of the judges to determine the truth lead to an excessive passivity of the parties, with no penalties or adverse consequences from their failure to act. This legal standard unduly shifts the workload from lawyers and prosecutors to the judges, and is a major factor contributing to delay. The Report suggests that the *ex officio* obligation of the judges to establish the facts is a deterrent to efficient administration of justice.

Another fundamental reason for delay, related to the previous reason, is the repeated return of cases from the second instance court for retrial by the trial court. The second instance courts resorted to a pedantic reliance on procedural technicalities to avoid full consideration of the case, and returned the case for trivial reasons. Although the procedure codes allow the second instance court to ascertain facts and issue final verdicts, the courts never did so, preferring to burden the first instance courts. Furthermore, the number of such returns is unlimited – a case may be bounced up and down the judicial instances for an unlimited period of time.

Another section of the report categorizes a long series of administrative and material reasons for delays, including the failure to sanction lawyers, accused and witnesses for failure to attend hearings.

Administrative reasons for delay included but are not limited to the following:

- The case quota system discourages judges from solving too many cases, or to choose complex and time-consuming cases.
- Court stenography and taking of evidence. The method of taking witness statements in BiH courts is at best cumbersome, awkward and time consuming. At worst, there is the potential for abuse of the parties and witnesses.
- Slow response of court-appointed expert witnesses.

Material reasons for delay include the following:

- Lack of funding, resulting in miserable service conditions.
- Lack of judges v. inefficiency of judges. JSAP believes that the current number of judges in BiH is not especially low compared with the judiciary in other countries, so a lack of judges is only a partial explanation for the apparent delays in the judiciary. Commentators who stress the need for additional judges generally assume that the current output of each judge may be taken as the norm. This assumption rests in part on the deeply ingrained tradition of ‘norms’, or quotas of cases that each judge must complete each month.
- Lack of administrative support staff.
- Low salaries. Judges’ salaries have increased, but support staff and general funding are low.
- Inexperience of judges. With the apparent lack of judges, the history of low salaries, and the generally poor working conditions, it is not surprising that many young and relatively inexperienced judges have joined the judiciary in recent years.
- Insufficient access to legal texts. The initial JSAP report from January 1999 confirmed that many judges do not have a full and comprehensive collection of legal materials at their disposal.
- Failure of witnesses, parties and lawyers to attend judicial functions. The efficiency of the judicial system is thwarted by the continuous failure of key participants to attend court investigations, hearings and related judicial proceedings. Many of the reasons are rather mundane, but together they constitute a serious source of delay, as follows:
 - Mailing address problems, leading to failure of persons to attend judicial hearings relates to the massive displacement of persons during the war, constituting roughly half of the population, over two million people.
 - Failure of courts to sanction persons that fail to attend judicial proceedings, although sanctions are available. The Criminal and Civil Procedure Codes in the Federation and the RS contain adequate procedures allowing judges to speed trials and other proceedings along, but the judicial authorities have not made full use of these powers in the recent past.
 - Compelling lawyers to attend. Lawyers fail to attend, but judges do not fine or report them to the Bar Association.
 - Compelling witnesses or accused to attend and fining witnesses for unjustified absence. Judges may order the police to bring in witnesses in both criminal and civil proceedings, but JSAP research suggests this is a rare event.
 - Court police. Efficient regular or court police could remedy many of these problems.
 - Default judgements against defendants that fail to attend

- Dismissal of cases for plaintiffs that fail to attend. In civil cases, aside from the possible sanctions on witnesses and lawyers as outlined above, there remains the procedure of terminating a case because the opposing party fails to attend. This remedy exists in the Civil Procedure Codes of both Entities.

After an explanation of the major causes of delay in the judiciary and the discussion of some possible remedies for the problem, the report also analyzes European Human Rights (ECHR) standards and finds that the lengthy proceedings appear to violate the ECHR. The report summarizes that “judicial delay affects the basic rights of those who seek justice”. In particular, the report notes the right to justice in reasonable time, as afforded by Article 6.1 of the ECHR:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

Finally, the report provides an analysis of the key procedural codes and suggests areas where modifications could improve the speed and efficiency of the judiciary.

The Thematic Report on Delay represents one of the JSAP Banja Luka team’s major accomplishments of the entire mission period. The report charted new territory in the understanding of the entire JSAP mission and international community generally regarding the inner workings of the courts. Furthermore, the broad and comprehensive nature of this Thematic Report means that this report bolsters and complements many other thematic reports that the JSAP mission will soon issue. Although a complex and time consuming job, JSAP Banja Luka was pleased to be able to make such a solid contribution to the assessment of the courts and the policy recommendation for the judicial reform process.

2.3 Thematic Report V: Execution of Court Judgements in Civil Cases

The JSAP Banja Luka team collaborated with the JSAP Tuzla team to form the foundation for the Enforcement Report, issued by JSAP in September 2000. JSAP Banja Luka gathered extensive information from the courts, undertook an analysis of the collected information and drafted a preliminary report on the topic.

JSAP Banja Luka team conducted a survey of the functioning of five municipal courts in the Banja Luka Region of the Republika Srpska, namely, Banja Luka, Gradiska, Kotor Vares, Prnjavor, and Srbac. The survey was based on the premise in the international community that the courts are not effectively enforcing civil judgements, whether in the controversial area of property evictions, or in the mundane area of commercial decisions.

During the fall of 1999, JSAP Banja Luka team performed an in-depth assessment of the working of the courts related to commercial enforcement. The team gathered an overview of the total number of cases handled in both categories, studied the case files of a random selection of cases, and also talked to judges and court presidents about their perspective on the work. Relations with the court officials proved cordial and open, and there was almost no problem regarding the access to the files.

In total, JSAP took notes on 32 cases, although other cases were briefly assessed and rejected for various reasons. The data collected was broad enough to generate a clear picture of the situation in these courts, and many of the findings simply confirm trends already noted by

JSAP and other international actors involved in reform of the judiciary. The study noted two complementary aspects of the problem of enforcement of judgements: the legislative framework, and the practical inadequacies of the courts due to lack of staff, poor working conditions, low salaries and lack of job security.

The JSAP Thematic Report outlines in concise form the substantial challenges that businesses and citizens face in relying on the court system to provide a practical dispute resolution mechanism. BiH remains a country fraught with disputes ranging from complex ethnic-based property issues, to routine business disputes. The failure of the court system to provide a remedy to these disputes contributes to ethnic conflict, encourages strong-arm business tactics, and discourages foreign private investment in an ailing economy.

3 Institution Building

3.1 Minor Offence Courts in the Federation

The reform of the Minor Offence Court (MOC) system in Middle Bosnia ranks among one of the larger contributions of JSAP to the improvement of the judicial system. The MOCs are significant because they deal with traffic-related cases, which make up some 80% of their cases, as well as inspections of labour, health and other standards, and finally, violations of the Peace and Public Order Statute, which can bring about a sanction of up to 60 days imprisonment. Furthermore, the few members of the public that do come into contact with the judiciary primarily have experience with the MOCs, thus this institution forms the basis for public opinion of the judiciary. While the regular courts in Canton 6 were unified in 1998, the MOCs remained woefully divided and mismanaged. JSAP supported the cantonal authorities' rationalization of the system, established at the Cantonal rather than municipal level, which eliminated the previous poor institutional arrangement.

From roughly 1992 until the year 2000, the Minor Offence Court system was completely divided between the 'Herceg-Bosna' and 'Republic BiH' courts and suffered from abominable conditions. The MOCs subsisted at the municipal level, and in Canton Six the MOCs, like the municipalities were split in two. The MOCs applied different laws, on the basis of ethnicity of citizens or police stations, and used different nationalist stamps and insignia.² The MOC judges' appointment depended almost in total on politicians. The financing of the courts also depended on the municipality, so the working conditions in some courts were atrocious. In some courts salaries were satisfactory while in others very low, and salaries depended only on the good will of municipal officials. Also, some of the judges were not properly qualified.

By October 2000, the cantonal authorities have radically improved the situation of the MOCs. The Cantonal Assembly passed legislation unifying the courts at the cantonal level, which means that the position of judges and courts is equal. There are no longer two courts for one municipality. The vast majority of local laws have been standardized, which guarantees the equal treatment of citizens before the law. Regarding the appointment procedure, there is no absolute independence from the political influence as exists in the regular courts, but the political influence is decreased, and there is the possibility of further changes in that regard. The newly appointed judges actually exceed the requirements for the position, which serves

² For example, two cars illegally parked on different sides of the same street would receive different fines.

as a guarantee for proper functioning of the courts. The Ministry of Justice has also provided some additional technical equipment in some courts. Finally, the salaries of all judges will be relatively high and equal regardless of nationality, and will not depend on the good will of local politicians.

3.2 Minor Offence Courts in Republika Srpska

Some significant progress has taken place regarding the improvement of the RS Minor Offence Court system, despite the relative lack of attention paid to this issue by the international community, including JSAP. The Judges Association of the RS Minor Offence Courts was established in the year 2000 with only basic support from the international community by way of ABA/CEELI. Subsequently, the Judges Association drafted a new Law on Minor Offence Courts, which made many improvements. After some suggestions from JSAP, the Judges improved the draft law further, and there may be some support from the Ministry of Justice and President of the Supreme Court for the reforms. This area of judicial reform seems ripe for change, and the Independent Judicial Commission (IJC) could probably make large improvements in the situation with little effort, considering the consensus and hard work achieved by the local authorities.

JSAP's discussions on the new draft law show the following developments, although the full law has yet to be translated into English. The latest draft law includes several provisions on independence, judicial selection process, interim review of judges, and salaries, that match closely with the current RS Law on Courts. For example, the draft creates a High Minor Offences Council, with nine members. Also, the law establishes a single MOC appeals court, which is necessary considering that the current system burdens the five District Courts, after the demise of the BiH appeals court in Sarajevo, with no unified appeals chamber. Regarding an increase in salaries, perhaps the main motivation of the MOC judges, JSAP believes that the additional 80,000 KM / month for increased salaries may win support in the Ministry of Justice.

JSAP's first thematic report detailed the plight of the Minor Offence Court system generally, and recent developments confirm the findings. The RS MOC judges are in dire straits, and deeply exasperated with their current financial and working situation. Many may resign soon. Considering that the new RS government would not be in place until January, and that the IJC will not begin work in earnest until about the same time, there is the possibility that many of the 100 RS MOC judges will no longer work as judges by the time the reform takes place. This area of reform may represent an opportunity missed by the international community.

3.3 Public Defender's Office

JSAP managed to encourage extensive improvement in the cantonal and municipal public defender's system, but the reform process is not fully completed, particularly at the Municipal level. The public defenders in BiH are the office that represents the state in civil court cases, and also certify that certain state activities do not harm the revenue or other interests of the state. The absence of public defenders caused at least two serious problems in Canton Six. First, for lack of a public defender, the courts postponed cases by citizens against the state for various reasons, a typical case being illegal expropriation of land without compensation. This practice probably constitutes a human rights violation. Second, the public defenders should have provided an internal check on corruption, such as the illegal

allocation of state-owned land without compensation to the state (and perhaps with compensation directly to the Mayors).³

JSAP learned of the problem from the International Crisis Group report of February 2000 criticizing the Middle Bosnia Canton for failure to establish the public defender's offices. Further investigations showed that the Cantonal Assembly did appoint a Cantonal Public Defender, who began work on 1 January 2000, but had accomplished little. The selection process for the 12 municipal public defenders began in March 2000, but the process dragged on due to a combination of lack of initiative by the Cantonal Public Defender, and obstruction by the municipal authorities, who had an interest in delaying the appointments.

Working together with the Cantonal Ministry of Justice, JSAP sought to push the selection process for the municipal public defenders forward. By July 2000, the number of public defenders was decreased to seven, several had been officially appointed, and a few of the municipal offices were fully functional. However several problems remained, especially regarding the financing and expenditures of the offices where one public defender covers several municipalities. By September 2000, the Ministry of Justice was only able to report limited progress on the offices. In one municipality, the local authorities had still not appointed the candidate, nor provided offices space and material. In several other municipalities, battles over financing continued to block proper operation of the offices. Considering that the elections scheduled for 11 November are now taking up much of the local authorities' time, it is unlikely that the full implementation will take place before next year.

JSAP had more success with the courts. The President of the Civil Law Section of the Cantonal Court explained that in fall 1999 he issued an official opinion that judges should not delay cases where the State is the defendant even if the municipal public defenders are not appointed. He referred to Article 29 of the Law on Local Self-government which provides that Mayors or their designates may represent the municipality in courts. The courts could also issue default judgements, although the Civil Procedure Code includes many pre-conditions before default judgements are possible. He accepted the JSAP proposal that he immediately issue a letter to all municipal courts reminding them not to delay cases because of a lack of legal representative from the State defendant.

JSAP's intervention did manage to bring the issue of public defenders to the fore, and force the local authorities to make substantial steps towards the full establishment of the system. Another possible solution is the enactment of legislation shifting control of the Public Defenders from the municipalities to the cantonal level, which proved successful with the Minor Offence Courts. In any case, continued monitoring of the situation is warranted, especially with the arrival of the new government. Given the human rights implications, another agency involved in human rights monitoring may be interested in taking over the issue once the UN withdraws from this issue.

3.4 Reorganization of Courts

In Middle Bosnia, JSAP entered into discussion with the key judicial authorities regarding the rationalization of the number of courts, but little action was taken, largely due to a lack of

³ JSAP's intervention was restricted to the Federation, but JSAP recently learned that the Banja Luka Public Defender was implicated in an illegal land transfer scheme, so this issue could even be expanded to the RS as an anti-corruption measure.

political will among politicians. Briefly, the authorities suggested decreasing the municipal courts from seven to five, eliminating the Fojnica and Novi Travnik courts. The remaining courts would house more judges, thus being able to form three-judge panels more easily. Also, a larger number of judges could allow for some further specialization among judges, increasing quality and efficiency. The reorganization would also provide administrative and financial savings.

While there is extensive agreement among the key judicial authorities, the reforms will have to wait for the next government, and the intervention of the Independent Judicial Commission. Municipal authorities in the two concerned municipalities opposed the plan, as did some of the concerned judges. A related plan to move the Cantonal Court to Novi Travnik was also met with displeasure by many judges.

In the Republika Srpska, the Law on Courts enacted in May 2000 created two new courts, one in Laktasi, currently part of the Banja Luka Basic Court jurisdiction.⁴ While the law has entered into force, the court has failed to take shape. JSAP understands that there is a problem of finding a building to house the new court, and generally for the funding of the new court. RS Supreme Court members have noted that there are some awkward jurisdictional issues because the Laktasi court exists on paper, but all the Laktasi cases continue to be heard in Banja Luka. Some local authorities believe the court may be deleted from the Law on Courts in the future.

3.5 Military Courts

JSAP monitored the successful closing down of the Military Court System in the Republika Srpska pursuant to the Law on Courts. The Law entered into force on 2 June 2000 and the three-month transition period for delivery of all cases from the Military Courts to the Basic Courts expired on 2 September 2000. In general, the transition proceeded smoothly, although the military judges and prosecutors were not pleased with this development. JSAP learned that all professional and regular staff of the courts managed to find positions within the military or the regular court system. Although allocation of the thousands of military cases to the proper basic courts was a logistical challenge, especially considering that a few case files include seized long-barreled weapons, the handover was accomplished successfully. The Ministry of Defence was not willing to hand over the central and spacious premises of the Banja Luka Military Court to the Ministry of Justice, so now four units of the RS military are housed in the former court building.

3.6 Land Books

During the war, land books and cadastral records became separated from their regular place in the court and municipality, and the return of these documents proved highly controversial, as would be expected considering that expulsion of minorities from their homes and land was a key goal of the combatants. By October of 1999, JSAP and the Ministry of Justice managed to resolve all land book issues except in the split municipality of Gornji Vakuf / Uskoplje.

In the courts in the Croat municipalities of Vitez and Novi Travnik, the Ministry of Justice managed to organize land-books offices. The Municipal Court in Bugojno, which had earlier

⁴ Laktasi is the hometown of Milorad Dodik, current RS Prime Minister.

kept land-books for Kupres municipality (in Canton 10), returned the books to the Ministry of Justice in Canton 10. The authorities in Zenica-Doboj Canton promised that the land-books for Busovaca municipality would be returned to the Municipal Court in Vitez.

In the split municipality of Gornji Vakuf/Uskoplje, JSAP was able to resolve, after extensive intervention, the return of landbooks from Uskoplje to the Bugojno court building. The Croat authorities in Uskoplje gained possession of the land books, but with the closure of the 'Herceg-Bosna' court of Uskoplje, the books should have returned to the Bugojno Court. The Municipal Court in Bugojno required the land books to process around 500 cases of various kinds that depend on the land-books (inheritance cases, mortgage, extracts from the land-books and other kinds of cases). The Uskoplje authorities maintained that they needed to keep the books as a basis for forming new cadastral registers, which had been destroyed during the war.⁵ Finally, the Ministry of Justice established a special Commission to deal only with land-books in Gornji Vakuf/ Uskoplje, and the commission agreed to inspect the books and then hand them over to the Bugojno authorities. JSAP's intervention in this issue was of critical importance in convincing the local authorities to accept the Ministry of Justice's recommendations.

3.7 Court Police

Although the Court Police have still not been properly established in the Federation, JSAP managed to work with the local Ministries of the Interior and Justice to form an interim agreement on court police for the municipal and Cantonal court premises in Middle Bosnia Canton. The Federation Constitution provides for Court Police, and the Federation enacted implementing legislation in October, 1996. Based on field experience with local judges and prosecutors, JSAP identified a pressing need for court police particularly with respect to the maintenance of security within the court buildings.

After extensive lobbying of local authorities by JSAP, and the support of IPTF, the Minister of Interior signed an agreement with the Minister of Justice on 5 May 1999, providing for 14 police officers to be assigned to the seven municipal courts and the Cantonal Court. After the Ministers signed the agreement, JSAP followed up on the implementation of the agreement, which did not begin officially until 2 August 1999, and was not fully activated. In September 1999 JSAP Banja Luka, with the support of JSAP MHQ, intervened once again with the two ministries, with the result that the Minister of Interior issued written instructions to the newly-assigned court police officers specifying their activities and responsibilities.

Since then, the Interim Agreement has served as a useful first step in securing judges' security, but much remains to be done. The Interim Agreement does not include assistance in the enforcement of judgements, the bringing in of witnesses, the personal security of judges at home during sensitive trials, and a range of other related activities. Furthermore, the court police on duty in the Canton have never received any specialized training regarding their responsibilities. For these reasons, IPTF and JSAP formed a special court police project under the auspices of the IPTF Commissioner, and the JSAP Banja Luka Team Coordinator moved to Sarajevo to head the new project.

⁵ It is also possible that the Uskoplje authorities wished to conceal illegal land transfers of absent refugee property, or state-owned property gained without compensation to the municipality. This type of activity appears to have taken place throughout BiH.

4 MHQ Requests

A significant amount of JSAP time, particularly in the beginning of the mission, was dedicated to the collection of data on the court system. During the first three months of JSAP's mandate, all JSAP field teams traveled throughout the country to visit each individual regular and minor offence court to gather a massive amount of quantitative data regarding the judiciary. Many of the findings collected in this period form the foundation of the JSAP database located at MHQ. In addition, throughout the JSAP mandate, the MHQ made requests for data collection and preliminary analysis of the field teams on specific topics of interest to UNMIBH and/or JSAP MHQ. Many of these research projects lead to significant insights into the workings of the judiciary, and some of the results from the Banja Luka team are summarized below.

4.1 USAID (United States Agency for International Development) Cases

The Director of the USAID Business Finance project in Sarajevo approached JSAP MHQ regarding a series of irregularities where USAID was seeking to recover assets through the local court system for defaulted loans. USAID runs a project lending millions of dollars to small and medium sized privately owned businesses throughout Bosnia. While the project has succeeded in providing badly needed capital to Bosnian entrepreneurs, who have in turn expanded production and created employment, a number of the loans were never repaid. JSAP MHQ requested each regional team to inquire into a few cases of alleged irregularities, and issue a brief report.

JSAP Banja Luka pursued one case in the Banja Luka basic court, and two cases in the Kiseljak municipal court, and in both courts some minor irregularities were uncovered. It is noteworthy that both courts made substantial efforts to remedy any perceived shortfalls, and JSAP managed to have some positive impact on the proper handling of the cases. In the Banja Luka case, a landlord sued USAID as a tenant for damages caused by a crowd of rioters who ransacked the building after the NATO bombing of Serbia in 1999 (IPTF, OHR, US, UK, France and German government offices were also damaged in related incidents). The RS Law on Obligations actually holds the municipality liable for damages stemming from riots. JSAP met with the judge and then attended the hearing. JSAP gathered inconsistent versions of the proceedings from USAID and the judge, so a full assessment was difficult to ascertain. Nevertheless, the judge now seemed disposed to admitting significant additional evidence from USAID, and to grant a postponement in the case to ensure a full opportunity for both parties to present all relevant evidence before a verdict.

In the Kiseljak Municipal Court, USAID had filed suit to foreclose on two loans secured by mortgages on property in the municipality. The Court President, who handled the cases, explained that the court had processed the cases slowly at first because of the move to the new court premises, but that now he was making progress on the cases. JSAP also heard a detailed explanation of a USAID procedural error in one case, which the President managed to fix, although this delayed the case. Regardless of the outcome, it appears that JSAP scrutiny has solicited a proper and balanced application of the civil procedure code.

4.2 Lengthy Detention

Subsequent to the Interim Report on Lengthy Detention, prepared by the Banja Luka JSAP team and issued by MHQ in February 2000, MHQ sought in August 2000, to gather an assessment of the situation throughout the country, and to gain an update on the situation of lengthy detention in the Banja Luka Prison.

JSAP Banja Luka contacted the President of the District Court and was able to gather extensive data on the latest developments in the criminal proceedings against accused in detention for longer than two years. The reasons for the lengthy detention varied, and remained consistent with the findings outlined in the JSAP Interim Report on Detention. The preliminary findings tend to show that the judicial authorities have made increasing efforts since the publication of the JSAP report to rectify the egregious cases of lengthy detention. Although most cases show signs of recent progress, data available shows that the courts have not yet completed any of the cases at the time of this report.

The President of the District Court, Judge Balaban, also issued an explanation for the length of detention. Briefly, he noted that it is possible to see that the real issue is that the cases are really complicated, and in some of them the first instance decision was even annulled twice, and a presentation of evidence was ordered in order to determine facts and issue a correct decision. He also noted the failure of witnesses to attend, the need to undertake numerous expertise, reconstruction of the events, and even exhumations as well as other evidence, the presentation of which caused the postponement of the main hearings and prolongation of the criminal procedure. It is true that there are some subjective shortfalls in particular cases where the main hearing was not scheduled immediately after the annulment of the first instance decision, or the decision was not taken within the legal deadline, which is certainly the court's mistake, and this caused an unnecessary prolongation of the criminal procedure.

The JSAP Banja Luka team would like to highlight that the actual number of pre-trial detainees in the Tunjice Prison in Banja Luka had decreased from about 110 in the winter of 2000, to only 45 in the summer of 2000. It is possible that JSAP's intervention is partly responsible for this dramatic decrease.

4.3 Ex-Officio Defence Counsel

JSAP MHQ also initiated a survey into the adequacy of court appointed defence counsel, pursuant to the JSAP Dobož team's initial inquiry on this subject in the Zenica and Dobož prisons. In October, 2000, JSAP visited the Banja Luka Prison, and interviewed 22 prisoners and detainees regarding defence counsel. JSAP met with a roughly equal number of prisoners who had received a final sentence, and detainees whose proceedings were still underway. In brief, JSAP noted several minor irregularities in the quality of defence counsel, suggesting that improvements may be necessary in the future, especially if changes in the Criminal Procedure Code shift a greater burden from the court to the parties.

4.4 Non-conforming Insignia

The Office of the High Representative issued instructions to all Federation authorities banning the use of the insignia of the illegal para-state "Herceg-Bosna", or the expired former government of Bosnia, the "Republika BiH". The IPTF engaged in a major campaign to eradicate all vestiges of the two unauthorized authorities and the use of the term "Zupanija"

instead of “Canton,” and JSAP MHQ decided to expand the investigation on the offending insignia to include judicial institutions. In November 1999, JSAP Banja Luka participated in the investigation, and gathered the following results.

JSAP Banja Luka team visited Jajce, Donji Vakuf, Bugojno and Gornji Vakuf/Uskoplje to check on non-conforming insignia. Briefly, Jajce uses only the Zupanija sign, not the Kanton sign. Donji Vakuf has some old stationary with Republika BiH, but new stationary conforms. Gornji Vakuf/Usokplije, with two minor offence courts, is fully non-compliant because the Municipality has not voted to unify the courts. Also, the Uskoplje police station, housing the ‘Croat’ Minor Offence Court, flies two Croatian flags.

5 Special Cases

As is evident from JSAP’s title, the primary goal of the mission was to provide a general assessment of the systemic characteristics of the court systems, rather than focussing on the merits of individual cases, which had already been undertaken by other human rights and related institutions in BiH, with mixed results. Nevertheless, the entire JSAP mission found rather quickly that one main tool for gathering insights into the systemic weaknesses of the BiH judiciary was the selective monitoring of individual cases. Most cases exposed systemic problems and in some instances contributed to thematic reports. Thus, most field teams concentrated to a varying degrees on certain high-profile cases, particularly those related to special concerns of the international community, such as corruption, organized crime, war crimes, or refugee return. The following section outlines the results of the JSAP Banja Luka team’s case monitoring.

5.1 Bugojno Terrorism Case

The JSAP Banja Luka team dedicated extensive time and effort to monitor this key case because it concerned one of the first instances of prosecution of perpetrators of violence against minority returning refugees or displaced persons. Furthermore, the alleged perpetrators were Bosniaks, Bugojno is a Bosniak controlled town, most court officials were Bosniak, but the victims were Croat returnees. The Cantonal Court’s confirmation of the convictions of seven of the eight perpetrators, with prison sentences ranging from three to six years, constitutes a major victory for the impartial rule of law in BiH. The case also suggests that international community attention to the judicial system encourages local authorities to undertake their responsibilities to conduct a just and impartial process.

The case involved eight Muslim fundamentalists accused of blowing up several Croat houses, and in one case of booby-trapping the door of Croat house. On 24 May 1999, the Municipal Court in Bugojno acquitted one of the accused, found six of the accused guilty of aggravated violation of general security of people and property (Article 308/1 related to Article 304/ 1 of the Criminal Code), and found one accused guilty of endangering public safety (Article 55 of the former Criminal Code). The Municipal Court’s characterization of the crime appeared improperly low under the circumstances. The Cantonal Court annulled the decision on 17 February 2000, citing an essential violation of procedure. On 18 May 2000, the Municipal Court announced a second verdict, acquitting one, finding guilty six for the new crime of Prevention of Return of Displaced Persons and Refugees (Article 186/II of the Criminal Code), and finding guilty one perpetrator for attempted murder (Article 171/I related to Article 20 of the Criminal Code). In September 2000, the Cantonal Court confirmed the verdict of the Bugojno Municipal Court. It may be noted that the Cantonal Court’s re-

characterization of the crimes may have been based in part on JSAP's detailed analysis of the case, which Ambassador Klein, the SRS, shared with the court officials.

5.2 PoljoExport

JSAP and the OHR Rule of Law section together monitored a commercial case that brought into question the validity of the expropriation, nationalization and re-registration of the assets of state-owned corporations by the Autonomous Serb Region of the Krajina, predecessor to the Republika Srpska. The case was politically sensitive because the creation and control of RS state-owned corporations with the assets once owned by firms based in other Former Yugoslav countries, and the Federation, constitutes the primary spoils of the war for Bosnian Serb leaders. The case also had the potential to undermine the imminent privatization of the new RS state-owned corporations. Finally, the case illustrated the difficulties of foreign direct investment in BiH until the court system is strengthened to be able to handle complex commercial cases on a regular basis.

Briefly, the case involved the sale of commercial property to repay a mortgage. The Banja Luka part of the state-owned company re-registered and claimed title to all the property within RS territory, but none of the liabilities. The Sarajevo part of the company granted a major international creditor a mortgage on the BL property as partial repayment for a pre-war debt. The creditor sought to enforce the judgement in Banja Luka Basic Court, but the Banja Luka company claimed the execution action was inadmissible, because it owns the property, not the Sarajevo part. The basic court judge's ruling permits the execution of the Banja Luka property's sale, but limits the influence of the decision in such a way as to effect only this case, while leaving alone the underlying issue of expropriation without compensation. The case is on appeal in the Banja Luka District Court.

5.3 Mayor of Kiseljak's Alleged Misallocation of Socially-Owned Land

There is now sufficient evidence to suggest widespread criminal allocation of socially owned land by municipal authorities throughout BiH, establishing another example of massive corruption by local politicians. JSAP Banja Luka first learned of this issue concerning the former Mayor of Kiseljak, but JSAP subsequently suggested similar criminal investigations of the Mayor and former Mayor of Travnik, and perhaps the former Mayor of Bugojno. The JSAP Tuzla team also followed a similar case in Zivinice. Finally, the *Reporter Magazine* in the RS issued several lengthy articles outlining similar corrupt allocation of socially-owned land in Banja Luka municipality. It is important to highlight that one obvious consequence of the criminal misallocation is the reduction in revenue to the State, resulting in unpaid salaries, poor health care and other social services, etc. Thus, the JSAP intervention succeeded at least in beginning criminal action against a few corrupt officials in BiH.

Briefly, JSAP's intervention involved working with the local Prosecutor regarding the criminal investigation against former Mayor Pero Madjar, removed by OHR in December 1999. The Mayor appears to have allocated over one hundred properties to local Croats without proper compensation to the Municipality, and perhaps with direct compensation to the Mayor or his political party, HDZ. JSAP managed to convince the Prosecutor to proceed by 3 March 2000 with instructions for further investigation regarding five or so transfers of socially owned building land not authorized by the Municipal Assembly, as required by the Law on Building Land. The case regarding the subdivision and allocation of part of the Serb-Orthodox Church property would also fall afoul of the OHR prohibition against transfers. At

the end of the JSAP mission, the Prosecutor had engaged a geodesic agency from Sarajevo to undertake an audit of the cadasteral office. It is possible that the investigation could widen to include the manager of the cadasteral office, the land book manager in the court, and even the Court President, who is responsible for certifying the legality of property transfers registered in the land books.

5.4 ‘Como’ of Kiseljak, Alleged War Criminal and Organized Crime Boss

The Croat pocket of Kiseljak constitutes another area of organized crime activity in BiH, and JSAP worked together with IPTF to convince the local police and judiciary to proceed against ‘Como’, the alleged local crime boss. Although IPTF and JSAP made significant progress in pushing regular crime reports through the police and judicial system, in the end, the Federation Ministry of Interior police officers arrested the accused based on war crimes allegations before the Zenica Cantonal Court relating to the ‘Stupni Do’ massacre in 1993. Como is now in pre-trial detention in the Zenica prison.

While the alleged perpetrator is now behind bars, the lengthy struggle by UNMIBH to urge the local criminal justice system to perform adequately in the face of powerful organized crime actors does not bode well for the future of law enforcement after the withdrawal of international monitors. Como’s control of the town perimeter during the war allowed him to nominate which businessmen could run profiteering activities, and he continues to extort payments from those and other local businesses. In addition, Como allegedly committed numerous acts of violence against local residents, yet time and again the witnesses, including police officers, could not remember details when providing statements to the police, prosecutor and investigation judges. Only after strenuous insistence from IPTF, and collaboration by the local Prosecutor, were 12 criminal charges against the accused filed and an investigation begun. In addition, a plan to search the accused’s home and business premises for a weapon linked to a shooting incident was thwarted by information leaking from Croat local police or judicial authorities to Como. At the end of the JSAP mission, the investigation on the 12 charges continues, and the Prosecutor has still not issued formal indictments. It is difficult to imagine that the criminal justice system could have dealt with organized crime figures like Como without extensive international support.

5.5 Tamic Torture and Murder Case

JSAP learned of a horrific crime that took place in Kiseljak during the Croat-Bosniak war. Allegedly, 38 HVO soldiers tortured three presumed draft deserters while on the back of a truck that paraded through Kiseljak town during the 1993 war, killing one and gravely maiming two. JSAP’s discussion with the Kiseljak prosecutor suggested that there were a large number of witnesses, including some court officials, which watched the procession from the office window. The victim’s brother also talked briefly with JSAP, and claimed that the soldiers stabbed his brother repeatedly in the abdomen, beat him profusely and publicly castrated him. During the war, the Kiseljak court characterized the case as grievous bodily harm, and took only preliminary investigative actions. According to the current characterization, the case would fall within the Federation Amnesty Law, and the court could take no further action.

JSAP raised the Tamic case with the Prosecutor and Deputy Prosecutor, and suggested that the court should not grant an amnesty in this case. The Prosecutors explained some of the difficulties regarding the case. There remains some doubt regarding the state of intent of the

perpetrators, the number of perpetrators, availability of pre-trial detention and whether the crime could be considered a war crime or not. However, they agreed to restrict the number of perpetrators to the five-six that were actually on the back of the truck, and to re-characterize the case as a more serious crime. JSAP and the Prosecutor's office will continue collaboration on the case, and it is now likely that the Prosecutor will consider the case as a murder case, although if the case fails, the prosecutor would attempt a retrial as a war crimes case.

5.6 War Crimes Cases

In the summer of 2000, JSAP learned of about 56 war crimes cases pending in the Middle Bosnia Cantonal Court with no action since the unification of the court system in June 1998. The cases include about 850 named alleged perpetrators, including some of the highest authorities in the Canton and the Federation. The cases proved highly controversial because they all derived from the 'Herceg-bosna' High Court with seat in Vitez, and thus all the cases concerned Croat victims and Bosniak perpetrators. The other side's cases, war crimes cases occurring on Canton Six territory concerning Bosniak victims and Croat perpetrators, fell under the jurisdiction of the Zenica-Doboj or Sarajevo Cantons, due to war time front lines and the universal jurisdiction of war crimes. Thus, the standard bias towards ethnic balance in all matters, including the rule of law, could not be maintained regarding war crimes cases, and the Croat side pushed strongly for prosecution, while the Bosniak side tried to postpone consideration of the cases.

In the end of August, after a lengthy discussion, the Cantonal Court President, a Bosniak, accepted JSAP's advice to register and open investigations on outstanding war crimes cases. JSAP agreed to provide written confirmation of the international community position on these cases. The President also grudgingly accepted that his interpretation of the Rome Agreement of February 1996 (Rules of the Road) was not in accord with opinion of the international community. The President believed the Agreement prohibited the court from taking any action on war crimes cases until the ICTY granted approval, whereas JSAP explained that the Agreement only forbid detention or indictment of the suspects, but that all other judicial actions must continue according to local procedures.

During September, JSAP issued a letter to the Cantonal Court President, the Cantonal Prosecutor and the Minister and Deputy Minister of Justice, requesting the court to register and process the war crimes cases. In October, JSAP met again with the Cantonal Court President to discuss implementation of the cases, and to check the new registry book for war crimes cases. While the cases were properly registered, the President remained reluctant to allocate the cases to investigation judges in his court, and agreed to do so only after JSAP's insistence.

While JSAP's interventions to assist the court system to fulfill its legal obligations proved successful, the war crimes episode suggests that the local judiciary is still not mature enough to function as an independent guarantee of the rule of law. Both the Croat and Bosniak judicial authorities demonstrated their highly politicized perspectives, and voiced their deep concern over adverse consequences by political parties and the general public if the court either processed (or postponed) consideration of the war crimes cases. In general, the war crimes cases show that the judicial reform process is still incomplete in BiH.

6 Judicial Review Process

The international community fostered laws⁶ in each Entity that would transform the judiciary into an independent branch of government. The laws provided for independence from political influence in the selection, disciplining, appointment and removal of judges and prosecutors. The laws also raised judicial authorities' salaries significantly to reflect their status in society and guard against the temptations of corruption. Finally, the laws created an Extraordinary Review of all sitting judges and prosecutors to ensure that their conduct conforms to international and European standards of suitability to perform judicial functions. JSAP was deeply involved in the development of the judicial review process, both at MHQ and in the field. In particular, JSAP formed the Judicial Review Team (JRT), made up of five judges and lawyers, who worked on a three month project to establish the criteria and rules to be used during the review process.

The JSAP Banja Luka Team dedicated extensive time and effort to the implementation of the Judicial Review Process. The Team's location at the seat of government of the Republika Srpska engendered additional responsibilities as a liaison office and support unit for the JRT, based in MHQ Sarajevo. JSAP Banja Luka also provided extensive monitoring and intervention support to the Middle Bosnia Canton authorities as they struggled to implement the law within the context of a Canton with a special, multi-ethnic regime. After the preliminary groundwork was in place, JSAP Banja Luka also monitored the first several meetings of the four Councils and Commissions in its area of responsibility and maintained records on the deliberations of all involved.

In the RS, JSAP Banja Luka team coordinated several key visits by MHQ staff and by members of the JRT. On 23 May 2000, the Head of JSAP and five members of the JRT flew to Banja Luka for two meetings, one with the RS Minister and Deputy Minister of Justice, and another with the President of the Supreme Court, President of the Association of Judges and Prosecutors, and the Deputy RS Public Prosecutor. The OHR Rule of Law Coordinator for the RS also attended. The main topic of the meetings was to discuss the procedures that the High Judicial Council (HJC) will employ to carry out the extraordinary review of all current judges and prosecutors, pursuant to the recently enacted RS Law on Courts and Judicial Service.

One of the key contributions of the JRT was the Book of Rules of the High Judicial Council and High Prosecutorial Council, and JSAP Banja Luka had a role in ensuring the full acceptance of these standards. On 16 June 2000, the JRT traveled to Banja Luka and received the approval of the President of the Supreme Court to all of the Book of Rules provisions in general. JRT agreed that JSAP Banja Luka would assist in further technical revisions. Subsequently, JSAP provided extensive translation and analysis of the Book of Rules prior to a series of lengthy working group meetings. JSAP Banja Luka together with OHR, and with the advice of the JRT team in Sarajevo, negotiated a successful approval of the Book of Rules. After the final drafting session, the team finalized the local language and English versions of the draft Book of Rules, and delivered Final Draft Book of Rules on 7 July. JSAP Banja Luka's efforts complimented the work of MHQ and the JRT and contributed to a successful start of the RS High Judicial Council and High Prosecutorial Council.

⁶ The RS Law on Courts, the RS Law on Prosecutors, and Federation Law on Judicial and Prosecutorial Service.

6.1 High Judicial Council

In close cooperation with the Office of the High Representative, JSAP monitored closely the establishment of the RS HJC. Even before the inaugural session, several issues arose regarding the election by the Association of Judges and Prosecutors of the delegates from each of the five judicial districts, and the selection of the three non-judicial members, who should add diversity to the HJC. The International Community feared that some of the candidates for the Association elections were actually candidates for removal from office for unsuitable activities, and as such would not be appropriate for members of the HJC. OHR and JSAP collected information that eventually led to the withdrawal of several candidates. The HJC members also had difficulty identifying esteemed members of the legal community that were not Serb males, and in fact the inaugural session was postponed while the search was expanded, although strong candidates were eventually identified.

The RS HJC inaugural meeting took place in the chambers of the Mala Vijećnica of Banski Dvor, in Banja Luka. Serb Member of the BiH Presidency Radišić, Speaker Djokić, Deputy Minister of Justice Kovačić, members of the international community and other distinguished guests attended the event. The meeting successfully fulfilled all requirements set out by the Book of Rules concerning the first meeting. The HJC members also selected the final three candidates.

At the second session, held on 1 September 2000, the HJC already began to assert some signs of independence. The HJC issued a variety of requests to the Ministry of Justice. The HJC requested the Ministry to reissue judicial vacancy notices so that all future judicial appointments pass through the HJC. The HJC also issued several additional proposals for action to the Assistant Minister of Justice. It is noteworthy that the international community could easily support some of the HJC suggestions, especially regarding legislative reform.

Regarding the legislative reform commission, the HJC members noted the urgent need to reform the Civil and Criminal Procedure Codes, the Minor Offence Code, the Law on the Execution of Civil Judgements, and draft a law on independent court financing

JSAP confirmed that the HJC completed the creation of all personal files for all judges, and collected and begun investigation of some 175 citizens' complaints. The HJC is now up and running, but the serious work of the judicial review process has just begun, and there are several critical unresolved issues left for the international community to resolve.

6.2 High Prosecutorial Council

The establishment of the HPC proceeded smoothly because the HPC benefited from the hard work already accomplished with the HJC, and also because the HPC had fewer members, and there are fewer prosecutors in comparison with the number of judges. The HPC Book of Rules is essentially identical to that of the HJC. The HPC has only one member that is not appointed *ex officio*, and while the HPC did experience difficulties in identifying suitable minority candidates, the task was eventually accomplished. Thus the preliminary activities proceeded uneventfully.

The RS Public Prosecutor convened the inaugural HPC session on 22 August 2000, in Banja Luka. The Prosecutor issued formal invitations to JSAP and OHR, who both attended. The

HPC members quickly completed all the procedural formalities as required by the Book of Rules, and the meeting concluded successfully. The HPC has not yet held its second session, and the Public Prosecutor informed JSAP that there has been only one complaint from the public against an RS prosecutor. The Prosecutor plans to convene a second meeting during the month of November, 2000.

6.3 Cantonal Commissions

In the Federation, the two Entity-level Commissions are joined by members of the Cantonal Commissions to form a unified system that still allows for proper representation at the Cantonal level. JSAP Banja Luka monitored the establishment of the Middle Bosnia Cantonal Commission for Judges, with five members, and the Cantonal Commission of Prosecutors, with three members. Due to the specific nature of Middle Bosnia Canton, which comprises both Croats and Bosniaks in a complex power-sharing regime, the selection of members of the Commissions proved rather challenging.

The highest Cantonal judicial authorities requested JSAP intervention to arbitrate between the various ethnic concerns that remain just below the surface of all Cantonal institutional matters. Under the circumstances, JSAP filled the void in the international community and took decisive action to resolve the dispute regarding the selection of Commission members. After intense consultations with local judicial authorities, JSAP proposed that three of the five Judicial Commission members be Croat, and two Bosniak, while two of the three Prosecutorial Commission members be Bosniak, one Croat. Furthermore, JSAP suggested that the Cantonal Judicial Commission President come from the Bosniak minority, while the Cantonal Prosecutorial Commission President be a Croat, with the two remaining members Bosniak. JSAP addressed all members of the Cantonal Court and all Municipal Prosecutors to inform them of the parameters under which JSAP suggested their selection take place. After JSAP intervention, the selection process took place without incident. In many respects, JSAP regrets that the judiciary must resort to ethnic quotas just as in the rest of the political system, but there was little room for compromise given the specific circumstances and high emotions on all sides. In the end, the Federation Commission has a deciding vote in all critical decisions, so the ethnic balance of the commissions does not play such an important role.

Once the local authorities had established the Commissions, JSAP met with the Presidents and attended all Cantonal Commission meetings. The Commissions proved cooperative and provided JSAP with all relevant information and copies of certain documents. In fact, the Cantonal Prosecutorial Commission has never met, although the President has taken several administrative actions such as submitting a budget request and opening files. The Prosecutor informed JSAP that it has no particular cases to date.

The Cantonal Judicial Commission held its inaugural session on 1 September 2000. The Commission accomplished all the administrative tasks required by law, and furthermore, the President allocated for investigation five cases transferred from the Federation Commission. Subsequently, on 22 September, the Commission held its first regular session, where the members reported on the results of the preliminary investigation into five cases, and allocated an additional eleven cases transferred from the Federation Commission. At the second regular session, on 17 October, the Commission members reported back on their investigation results.

Based on JSAP's preliminary experience with the Cantonal Judicial Commission, there may be reason for concern regarding the level and intensity of the judicial review process, although the commission's activities have just begun. The Commission members show a passiveness and lack of initiative in their investigations. Also, while JSAP believes the members may suspect some of their colleagues of gross unsuitability for judicial office, there is a timidity regarding the assertion of the right to investigate a judge that has not received a complaint by the public, or instructions by the Federation Commission. The results so far suggest that the international community would need to work hard to convince the Commission members to fulfill the requirements of the law and undertake a serious review of incumbent judges.

7 Conclusions

At the close of the two year JSAP mandate, the JSAP Banja Luka team believes that the Programme has made a substantial contribution to the assessment and analysis of the local judicial system, but that implementation of the findings remain largely unrealized. The production of numerous Thematic Reports detailing the weaknesses in the judicial system and outlining priorities and plans of action rank among the significant accomplishments of the JSAP Mission. JSAP Banja Luka also played an important role in developing thematic reports and contributing to output from MHQ and other teams.

Some of JSAP's larger successes occurred when the JSAP Teams in the field exceeded the passive mandate of assessment and filled the void to promote the direct implementation of judicial reform activities. JSAP Banja Luka managed to encourage extensive institutional reform and encourage judicial authorities to follow domestic and international standards through direct intervention with local authorities. In some respects, the accomplishments achieved through direct intervention were more rewarding and possibly more important than the passive assessment role originally assigned to JSAP.

The General Framework Agreement for Peace (GFAP) dating from the end of 1995 managed to end hostilities and provide a basic blueprint for a lasting peace, although the blueprint contained some weaknesses, and a complete peace has yet to be fully constructed. Judicial reform to promote the rule of law is a critical element in any peace process, but the GFAP is generally silent on the issue, apart from certain provisions of Annex Six, Human Rights. From 1996-1998, a veritable alphabet soup of international and domestic agencies were involved in judicial reform, rule of law, judicial training, human rights monitoring, ombudsman interventions and other activities related to the judicial system. However, no agency had managed to provide a proper assessment of the functioning of the courts, as a foundation for developing concrete and sensible policy recommendations for reform.

JSAP was founded in 1998 to provide an in-depth and comprehensive assessment of the judicial system, and the mission has largely accomplished this task. But a solid assessment of the judicial system will be in vain if the policy recommendations are never implemented as a basis for establishing the rule of law, a component of the peace process. In many respects, JSAP's closure is premature, because the implementation of its findings have yet to be started in earnest, and the substantial investment by the international community could be lost if a successor agency does not properly carry on the work that JSAP began.

Five years after the Peace Accords, the international community needs to implement judicial reform in BiH as a means to building a lasting peace based on the rule of law. The judiciary

now remains inadequate. JSAP's work provides the basis for such an intervention, but the true rewards of the JSAP mission will hopefully be realized when the judicial system is actually reformed to meet international standards, and provide true legal protection to the citizens of BiH.